

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 7113
DATE COMPLAINT FILED: July 26, 2016
DATE OF NOTIFICATION: July 29, 2016
DATE OF LAST RESPONSE: None
DATE ACTIVATED: Jan. 24, 2017

ELECTION CYCLE: 2016
EARLIEST SOL: June 27, 2021
LATEST SOL: Aug. 3, 2021

COMPLAINANT: L. Michael Zinser
RESPONDENT: Power of Liberty, Inc.
**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30104(f)
11 C.F.R. § 100.29
11 C.F.R. § 104.20
INTERNAL REPORTS CHECKED: Disclosure Reports
FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Power of Liberty, Inc. ("Power of Liberty"), a 501(c)(4) organization, failed to disclose approximately \$53,227 in electioneering communications disseminated by radio in Tennessee's Sixth Congressional District before the August 4, 2016, Republican primary election. A news article cited in the Complaint states that Power of Liberty also ran similar ads in Tennessee's Eighth District. Power of Liberty did not respond to the Complaint.

Based on the available information, we recommend that the Commission find reason to believe that Power of Liberty, Inc. violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b) and

1 authorize an investigation to determine the extent of Power of Liberty's undisclosed 2016
2 electioneering communications.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Facts**

5
6 Power of Liberty is a Tennessee non-profit corporation organized under section 501(c)(4)
7 of the Internal Revenue Code and is not registered as a political committee with the
8 Commission.¹ It was formed on May 2, 2016, by Steve Gill, an attorney and former
9 congressional candidate, who serves as the organization's registered agent.² Gill operates a
10 media company, Gill Media, Inc., that develops advertisements.³

11 Representative Diane Black and former Tennessee State Representative Joe Carr were
12 candidates in the August 4, 2016, Republican primary for Tennessee's Sixth Congressional
13 District.⁴ Gill reportedly helped Carr publicize his campaign launch.⁵

14 In mid-July 2016, a news article cited in the Complaint reported that Power of Liberty
15 disseminated "[a] wave of negative ads" targeting Republican primary election candidates in

¹ Complaint at 1, n. 1; About Us, Power of Liberty, <http://www.powerofliberty.us/about-us.html>.

² <https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=139155096101164166254078100083150060250152189118>

³ <http://gillreport.com/bio/>.

⁴ Black defeated Carr in the primary election and won the general election.

⁵ <http://knoxblogs.com/humphreyhill/2016/05/10/black-green-spat-cancels-wilson-county-reagan-day-fundraiser/>. This news report is unclear as to the nature and extent of the relationship between Gill and the Carr campaign. We considered whether the radio advertisements at issue in this case might constitute coordinated communications, and thus, in-kind contributions to Carr. 52 U.S.C. § 30116(a)(7)(C); 11 C.F.R. § 109.21(b), (c)(1). There is, however, insufficient information to make such recommendations now. If during the proposed investigation of Power of Liberty's electioneering communications, we are provided with evidence that the communications were coordinated, we will make appropriate recommendations at that time.

1 Tennessee's Sixth and Eighth Districts.⁶ On August 4, 2016, the date of the election, Power of
2 Liberty filed a notice with the Commission disclosing a disbursement of \$34,690 on August 1,
3 2016, for an electioneering communication for "income tax tv/per diem radio" that did not
4 identify a corresponding federal candidate.⁷ The Commission's Reports Analysis Division
5 ("RAD") sent Power of Liberty a Request for Additional Information ("RAI") on August 30,
6 2016, regarding the report, but Power of Liberty did not respond.⁸

7 The Complaint alleges that on or around June 27, 2016, Power of Liberty contracted with
8 various radio stations in Tennessee to broadcast advertisements that referred to Black and Carr.⁹
9 The Complaint attaches purported transcripts of two radio advertisements. The first describes
10 inconsistencies between Black's public statements on several policy issues and her congressional
11 voting record:

12 18-year incumbent, career politician Diane Black says Congress is
13 full of hot air from politicians who say the right thing but don't do
14 the right thing. That's exactly what *she* does. Diane Black says
15 'she voted against the Boehner-Obama budget' but the
16 *Congressional Record* shows she voted for it. She says 'she voted
17 against the crony capitalism at the Ex-Im Bank' but the Heritage
18 Action scorecard shows she voted *for* it twice! She says 'she
19 voted against higher spending and debt' but the truth is that our
20 national debt has increased by over six trillion dollars since she's

⁶ Compl. at 1, n.3; <http://www.tennessean.com/story/news/politics/2016/07/14/diane-black-camp-slams-joe-carr-over-ads-dark-money-group/87060492/>.

⁷ 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, Power of Liberty (Aug. 4, 2016), <http://docquery.fec.gov/pdf/312/201608049022178312/201608049022178312.pdf>.

⁸ <http://docquery.fec.gov/pdf/909/201608310300057909/201608310300057909.pdf>.

⁹ Compl. at 1 (Aug. 19, 2016); <http://www.tennessean.com/story/news/politics/2016/07/14/diane-black-camp-slams-joe-carr-over-ads-dark-money-group/87060492/>.

1 been in Congress thanks to her votes for more spending and higher
2 debt. She says 'she helped write the law requiring accountability
3 metrics in border security,' but her voting record shows she voted
4 to give driver's licenses to illegal aliens. Call 18-year career
5 politician Diane Black at (202) 225-4231. Tell her to stop spewing
6 congressional hot air and tell the truth. Career politician Diane
7 Black's record makes one thing clear: she's not the solution to the
8 problems in Washington, she is the problem. Paid for by Power of
9 Liberty Inc. powerofliberty.us. Not affiliated with nor approved by
10 any campaign or campaign committee.¹⁰

11
12 The second advertisement unfavorably compares Black's congressional voting record
13 with Carr's state legislative record:

14 [UNINTELLIGIBLE] politicians like Diane Black is double talk.
15 The border remains unsecured and the illegals continue to come. Call
16 Diane Black today. (202) 225-4231. Tell her we need more than just
17 tough talk on immigration, we need action. Be sure to ask her if she's
18 so tough on illegal immigrants, why'd she vote to give illegals
19 Tennessee driver's licenses? Paid for by Power of Liberty Inc.
20 powerofliberty.us. Not approved by any candidate or candidate
21 committee. Conservative Joe Carr is standing firm against the
22 Washington establishment. While professional politicians talk tough
23 about illegal immigration, Joe Carr has taken action to secure our
24 borders, preserve our jobs, and protect our communities. As a
25 legislator, he wrote and passed bills to block sanctuary cities in
26 Tennessee and to require verification of legal status to get a job or
27 taxpayer benefits. Call Joe Carr today. (615) 200-0681. And thank
28 him for standing firm against the Washington insiders who refuse to
29 secure our border and enforce our laws.¹¹

30
31 Complainant alleges that the two radio advertisements aired continuously from June 27 to
32 August 3, 2016, on stations that reach voters in the Sixth District, and that FCC records suggest
33 that Power of Liberty spent \$67,422 on the advertisements.¹² Based on the assumption that an

¹⁰ Compl., Attach. A.

¹¹ Compl., Attach. B. Because the disclaimer for this advertisement appears in the middle of the transcript, it is unclear whether the transcript is describing one advertisement or two.

¹² Compl. at 2 (citing Federal Communications Commission, Licensing and Databases: Public Inspection Files, available at <https://publicfiles.fcc.gov/>). The Complaint claims that it obtained payment information from

1 equal number of the Power of Liberty advertisements ran each day, Complainant estimates that
2 Power of Liberty spent at least \$53,227.89 of the \$67,422 in disbursements during the 30-day
3 period before the August 4, 2016, primary election.¹³ As mentioned above, Power of Liberty
4 filed only one electioneering communication report disclosing a disbursement of \$34,690; that
5 report was two days late and incomplete, and it remains uncorrected.¹⁴

6 The news article mentioned above also referred to Power of Liberty's advertisements in
7 Tennessee's Eighth District.¹⁵ David Kustoff, Mark Luttrell, Brian Kelsey, and Brad Greer were
8 candidates in the 2016 Republican Eighth District primary election. A July 21, 2016, news
9 article also identified Power of Liberty as the "secretive group" that was "campaigning against
10 candidates" in Tennessee's Eighth Congressional District.¹⁶ The article described radio
11 advertisements mentioning Luttrell, Kelsey, and Greer. The radio advertisement that mentioned
12 Luttrell reportedly reads, "While Republicans in Congress are trying to repeal Obamacare, Mark
13 Luttrell wants to expand it?!?!"¹⁷ The radio advertisement regarding Kelsey, a state senator,
14 reportedly reads, "As illegals continue to pour across our open borders, Senator Brian Kelsey has
15 a simple plan to deal with illegal immigration: Send illegal immigrants to college and send

FCC public files and cited to specific amounts that Power of Liberty paid to seven radio stations. Compl. at 2, n 4. The Complaint, however, did not include any of the corresponding invoices or other documents, and we have been unable to obtain the documents from the FCC public files. Although Complainant cites the FCC public files available over the internet, it is possible that Complainant obtained records directly from the radio stations.

¹³ Compl. at 2, 4.

¹⁴ Compl. at 2. Power of Liberty has not filed any other additional electioneering communication reports.

¹⁵ Compl. at 1, n 3.

¹⁶ Tyler Whetstone, 'Shadowy' attack ads don't report donors, The Jackson Sun, July 21, 2016, <http://www.jacksonsun.com/story/news/politics/elections/2016/07/21/shadowy-attack-ads-dont-report-donors/87343506/>.

¹⁷ *Id.*

1 Tennessee taxpayers the bill!"¹⁸ The article further reported that the radio advertisements have
2 been "punching" Greer, a Tennessee businessperson.¹⁹ FCC public files show that Power of
3 Liberty spent \$7,050 on August 1, 2016, three days before the primary election, to run a
4 television advertisement about "Tax policy, including state income tax in Tennessee" that
5 referred to Kustoff.²⁰

6 Power of Liberty did not respond to the Complaint.

7 **B. Legal Analysis**

8 An "electioneering communication" is any "broadcast, cable, or satellite communication"
9 that references a "clearly identified" federal candidate, is distributed "within 30 days before a
10 primary . . . election" and is "targeted to the relevant electorate."²¹ "Broadcast, cable, or satellite
11 communication" includes any communication publicly distributed over a radio station.²² Every
12 person who pays for the "direct costs of producing and airing electioneering communications in
13 an aggregate amount in excess of \$10,000 during any calendar year shall, within 24 hours of
14 each disclosure date, file with the Commission" an appropriate disclosure report.²³

15 The radio advertisements identified in the Complaint that ran within 30 days before the
16 August 4, 2016, primary (allegedly costing \$53,228) are electioneering communications.
17 The advertisements named federal candidates Black and Carr, and targeted the relevant

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ [https://publicfiles.fcc.gov/find/power%20of%20liberty/page-offset-0/order-best-match/filter-\[\]/#files](https://publicfiles.fcc.gov/find/power%20of%20liberty/page-offset-0/order-best-match/filter-[]/#files).

²¹ 52 U.S.C. § 30104(f)(3); 11 C.F.R. § 100.29(a).

²² 11 C.F.R. § 100.29(b)(1).

²³ 52 U.S.C. § 30104(f)(1); 11 C.F.R. §§ 104.5(j), 104.20(b).

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1 electorate in the Sixth Congressional District. As such, Power of Liberty was required to file an
2 electioneering communication report after it paid for or contracted to spend over \$10,000 for any
3 of the radio advertisements.²⁴ Since Power of Liberty allegedly spent about \$1,774.26 per day to
4 broadcast the advertisements, it would have crossed the \$10,000 reporting threshold by July 10,
5 2016, when its aggregate disbursements for electioneering communications reached \$10,645.56
6 (\$1,774.26 x 6). Therefore, Power of Liberty was required to file an initial report on or about
7 July 11, 2016, and additional reports about every six days thereafter, until the primary election.

8 Additionally, contemporaneous news articles indicate that Power of Liberty also
9 disseminated radio advertisements referencing candidates in the Eighth District during the 30-
10 day pre-primary electioneering communication window. Notably, one radio advertisement
11 distributed sometime in July 2016 reportedly stated: "While Republicans in Congress are trying
12 to repeal Obamacare, Mark Luttrell wants to expand it?!?!" and another radio advertisement
13 reportedly stated, "As illegals continue to pour across our open borders, Senator Brian Kelsey
14 has a simple plan to deal with illegal immigration: Send illegal immigrants to college and send
15 Tennessee taxpayers the bill!" Both of these radio advertisements appear to be electioneering
16 communications — they name federal candidates Luttrell and Kelsey, and they targeted the
17 relevant electorate. Therefore, Power of Liberty may also have been required to file
18 electioneering communication reports for these radio advertisements.

19 As mentioned above, Power of Liberty filed only one electioneering communication
20 report, which was late and incomplete, and it did not respond to an RFAI regarding the report, or
21 to the Complaint.

²⁴ 52 U.S.C. § 30104(f)(5); 11 C.F.R. § 104.20(a).

1 The available information indicates that Power of Liberty failed to file or correct a
2 number of required reports for disbursements it made during the 30-day electioneering
3 communication window. As such, we recommend that the Commission find reason to believe
4 that Power of Liberty, Inc. violated 52 U.S.C. § 30104(f) and 11 C.F.R. § 104.20(b).

5 **III. PROPOSED INVESTIGATION**

6 Because the full scope of Power of Liberty's broadcasting activity is unclear, we intend
7 to discover all of the public communications Power of Liberty distributed in Tennessee's Sixth
8 and Eighth Districts in the 30 days before the August 4, 2016, Republican primary election. We
9 intend to review the content of these communications and verify which advertisements qualify as
10 electioneering communications. We will also seek to learn the costs of these communications.
11 We then intend to work with RAD to determine how many reports Power of Liberty should have
12 filed. Although we will attempt to conduct the investigation informally, we recommend the
13 Commission authorize the use of compulsory process, should informal means prove ineffective.

14 **IV. RECOMMENDATIONS**

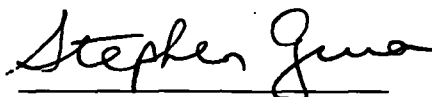
- 15 1. Find reason to believe that Power of Liberty, Inc. violated 52 U.S.C. § 30104(f) and
16 11 C.F.R. § 104.20(b).
17
18 2. Approve the attached Factual and Legal Analysis.
19
20 3. Authorize the use of compulsory process, as necessary.
21
22 4. Approve the appropriate letters.

23
24 Lisa J. Stevenson
25 Acting General Counsel
26

27 Kathleen M. Guith
28 Associate General Counsel
29 for Enforcement

4.17.17

Date



Stephen Gura
Deputy Associate General Counsel
for Enforcement



Mark Shonkwiler
Assistant General Counsel



Kamau Philbert
Attorney

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